Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 1978

NO. 78-523

WILLIE BAILEY, et al.,

Appellants,

vs.

J. CLAYTON HARGROVE, etc., et al.,

Appellees.

SUPPLEMENT TO JURISDICTIONAL STATEMENT

CHRISTOPHER COATES
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ATTORNEYS FOR APPELLANTS

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WILLIE BAILEY, et al.,

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Appellees.

SUPPLEMENT TO
JURISDICTIONAL STATEMENT

In appellants' Jurisdictional Statement, p. 3, it is stated that notice of appeal in this case was filed on July 28, 1978. The notice of appeal was filed by mail and at the time the Jurisdictional Statement was prepared, the undersigned was under the impression that July 28, 1978 was the date on which the notice of appeal was filed in the district court. It has since come to the attention of the undersigned that this date is incorrect,

and that as shown by Exhibit 1 hereto, the notice of appeal was filed on July 26, 1978.[1]

At the time the Jurisdictional Statement was prepared, the undersigned, pursuant to Rule 13(1) of this Court and based upon the above-mentioned incorrect belief concerning the date of the filing of the notice of appeal, calculated that appellants had until September 26, 1978 to docket their appeal. The appeal was docketed on that date. It is now clear that pursuant to Rule 13(1) this appeal should have been docketed on September 25, 1978 and thus this appeal was docketed out of time by one day.

Appellants request that this appeal not be dismissed for failure to comply with Rule 13(1) for several reasons. First, the undersigned's failure to comply

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1. After the Jurisdictional Statement was filed, the Clerk's office of this Court requested that a copy of the notice of appeal as filed in the district court be forwarded to this Court. The jurisdictional statement appendix included only a typed facsimile of the notice. It was only when counsel requested and received a copy of the notice from the district court that the error as to the date was discovered.

with Rule 13(1) does not constitute a jurisdictional defect. Communist Party v. Whitcomb, 414 U.S. 441, 445 n. 4 (1974); Johnson v. Florida, 391 U.S. 596, 598 (1968). Therefore, this Court has the authority to hear this appeal, notwithstanding the fact that it was filed out of time by one day.

Second, the docketing on September 26 rather than September 25 was not the result of intentional tardiness or neglect. Instead, it was the result of the undersigned's mistaken impression concerning the date on which the notice of appeal reached the district court. Cf. Pittsburg Towing Co. v. Mississippi Valley Barge Line Co., 385 U.S. 32 (1966).

Third, it is submitted that the purpose underlying the time limitations in 28 U.S.C. §2101 and Rule 13(1) should be considered by this Court in determining whether to dismiss this appeal. Time limitations of this sort were provided so that appeals can be disposed in an expeditious manner. In this regard, it should be noted that pursuant to 28 U.S.C. §2101(b), appellants had until August 28, 1978 to file their notice of appeal. Had this full sixty (60) days been used, the appeal would not have

been required to be docketed in this Court until October 27, 1978. Therefore, though the docketing of this appeal out of time was in violation of Rule 13(1), the violation in the context of this case is not the type of violation that has the result of protracting the litigation beyond the time periods contemplated by 28 U.S.C. §2101(b) and Rule 13(1).

For the foregoing reasons appellants respectfully request that this Court take notice of the correct date on which the notice of appeal was filed and that the Court not dismiss this appeal because it was filed out of time by one day.

Respectfully submitted,

s/Christopher Coates

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JUL 26 1978
Clerk, U.S. District Court
Middle District of Georgia

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

WILLIE BAILEY, et al.,

Plaintiffs,

v.

ROY L. VINING, JR., etc., et al.,

Defendants.

Civil Action No. 76-199-MAC.

NOTICE OF APPEAL
TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that plaintiffs appeal to the Supreme Court of the United States from the portion of the order entered by the district court in this action on June 28, 1978, which held that the local constitutional amendment to the 1945 Georgia Constitution found at Ga.Law 1962, p. 776, is not a change in election standards, practices or procedures covered by the pre-clearance requirements of 42 U.S.C. §1973c.

This appeal is taken pursuant to 42 U.S.C. §1973c.

Respectively submitted,

Christopher Coates

s/ Christopher Coates
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COUNSEL FOR PLAINTIFFS

Exhibit 1